

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT ZAMORA,

Defendant and Appellant.

2d Crim. No. B231703
(Super. Ct. No. 2009045826)
(Ventura County)

Robert Zamora appeals a judgment following conviction of first degree murder, with findings that he personally used a deadly and dangerous weapon, personally inflicted great bodily injury upon the victim, and committed the murder during a robbery. (Pen. Code, §§ 187, subd. (a), 189, 12022, subd. (b)(1), 12022.7, subd. (a), 190.2, subd. (a)(17)(A).)¹ We strike the three-year sentence for personal infliction of great bodily injury, and modify the sentence to reflect a one-year determinate term for personal use of a deadly weapon, but otherwise affirm.

FACTS AND PROCEDURAL HISTORY

In the early evening of December 15, 2009, Mark Thomas, Jr., his father, and several friends found the body of Stanley Parker lying in the street behind an

¹ All further statutory references are to the Penal Code unless stated otherwise. References to sections 12022 and 12022.7 are to versions in effect prior to repeal effective January 1, 2012.

industrial park on Arundell Circle in Ventura. Parker had been stabbed repeatedly and his throat had been cut. His backpack, a bank debit card, and some coins were near his body which continued to bleed from his wounds. The men reported the finding to the police emergency dispatcher who called for paramedics and police assistance.

Zamora and Parker were friends and longtime employees of Spring Industries, a spring manufacturing company, located in the Arundell Circle industrial park. Parker did not have a vehicle, and Zamora and other employees frequently drove him to a bus stop. At times, Parker lived with his sister in Thousand Oaks or in a mobile home parked in the Springs Industries parking lot.

On December 15, 2009, Springs Industries paid its employees early. During a lunch break, Zamora and Parker went to an Oxnard liquor store and cashed their paychecks before returning to work.

At the end of the workday, employee Charles Smith asked Zamora if he could borrow \$20 as he was unable to cash his paycheck. Zamora offered him a \$100 bill and instructed him to obtain change at the nearby Chevron gasoline station. Smith left Spring Industries at 4:30 p.m. and arrived at the Chevron gasoline station at 4:35 p.m. Zamora and Parker arrived shortly thereafter in Zamora's Ford Ranger truck. Parker walked inside the station's convenience store and purchased cigarettes and a drink. Smith gave Zamora \$80 in change from the \$100 bill. Zamora informed Smith that he was driving Parker to the mall – a location where Parker sometimes made a bus connection.

Approximately one hour later, Thomas, his father, and their friends found Parker's body. They walked near the body to determine if Parker was alive. One man stepped in blood that had pooled around the body and left his footprints.

Ventura Police Officer Michael McCaskill arrived at the crime scene at 5:46 p.m. He saw that blood and urine continued to flow from Parker's body and that there were bloody footprints nearby. Other police officers arrived shortly thereafter and, among other things, took photographs of the crime scene, the bloody footprints, and the shoe soles of Officer McCaskill, the paramedics, and the men who found Parker's body.

The bushes near Parker's body were not disturbed. Near Parker's body, police officers found his backpack, eyeglasses, lighter, cap, and coins, but not his wallet or the murder weapon.

Doctor Janice Frank, the Ventura County Chief Medical Examiner, performed an autopsy and determined that Parker died from multiple stab wounds, including a "devastating" incised neck wound that severed his carotid artery, larynx, and esophagus. The wounds were inflicted "every which way," implying that the physical relationship between Parker and his assailant changed constantly. Parker had defensive wounds on his hands, wrist, and forearm, and abrasions on his knees and elbows consistent with falling to the ground.

Doctor Frank removed and examined Parker's clothing during the autopsy. In his clothing pockets, she found an earnings statement from Springs Industries for \$767.65, a crushed box of cigarettes, and a broken glass pipe that may have been used to smoke cocaine.

Zamora lived with his erstwhile girlfriend, Paula Edwards, and her mother in an apartment on Channel Islands Boulevard. He agreed to pay one-third of the monthly rent, but frequently did not pay his share. At times, he gave Edwards his portion of the rent, but would request its return a short time later. Zamora explained to Edwards that he "owed money to people."

Approximately six months prior to Parker's death, Zamora moved from the apartment because Edwards would not lend him \$260. He stated that he "owed some people money" and would not return until he paid the debt. Zamora returned to the apartment within several weeks and stated that he "wouldn't owe people money again." On December 10, 2009, Zamora requested a loan from Edwards's deferred compensation account because he again owed a debt. Edwards declined to invade her account, but gave Zamora \$260.

On December 15, 2009, Zamora picked up Edwards from her workplace about 4:45 p.m. His knuckles were abraded and he stated that he had injured them at work that day. Zamora dropped off Edwards at their apartment and stated that he had to

pay a debt. Approximately five to ten minutes later, he returned to the apartment and went upstairs and took a shower. When Zamora returned downstairs, he took a trash bag from the kitchen and suggested that they "do some laundry" at the nearby Laundromat. He went upstairs and returned with a bag of clothing.

At the Laundromat, Zamora placed the clothing inside the washing machine while Edwards obtained coins and detergent. While the clothing (including Zamora's tennis shoes) was laundered, Zamora returned to the apartment. He instructed Edwards to stand in front of the washing machine. She noticed that the water was a "pinkish color" and that there appeared to be blood in the clothing. When Zamora returned, he suggested that they purchase food from a nearby restaurant and leave the clothing at the Laundromat. The following day, Ventura Police Officer Daniel Stegner accompanied Edwards to the Laundromat where they found Zamora's clothing in a basket.

Police officers examined the interior of Zamora's truck and found blood on the seat and driver's door. Laboratory testing of the swabbed samples obtained from the truck interior revealed the DNA of the samples to be that of Parker. Comparison of the bloody shoe prints in the photographs of the crime scene with the soles of Zamora's shoes provided "very strong support" for the conclusion that Zamora's shoes made the shoe prints. Forensic scientist Kristin Rogahn opined that Zamora's shoes likely were inked in Parker's blood because his shoes were very worn and unlikely to have caused so many footprints had he stepped in the blood only once.

Forensic laboratory testing of Parker's and Zamora's blood samples revealed the presence of marijuana cannabinoids. Analysis of Parker's urine also revealed that he had ingested cocaine within 48 hours of his death. Analysis of Parker's blood did not reveal cocaine metabolite, however, indicating that he had not ingested the drug immediately preceding his death.

Zamora testified that after leaving the Chevron gasoline station, he and Parker went to Oxnard to buy illegal drugs. Zamora was unable to find a drug supplier, however, and Parker suggested that they drive to the Arundell Circle industrial park and buy cocaine from a homeless man there. Zamora returned to the industrial park and

Parker pointed out the homeless man, a Caucasian man with blonde hair who was wearing soiled clothing. Parker and the homeless man walked out of sight. When Parker did not return, Zamora drove to find him. Instead, he found Parker's lifeless body. Zamora testified that he tried to pick up Parker, but he appeared to be dead. Frightened and panicked, he walked back and forth near the body. He stated that he did not summon police assistance because it looked like "a drug deal went bad."

Zamora testified that he did not kill Parker and denied owing money to anyone. Zamora admitted that he spent \$100 to \$150 on marijuana and crack cocaine each week. He stated that he used money from his paycheck as well as Edwards's money to buy drugs. Zamora admitted that he had "a significant crack cocaine problem" in December 2009, and that he owed "a lot of money to a lot of people."

During an interview with police officers, Zamora stated that he did not see Parker again after dropping him off at the Chevron gasoline station and that he did not take his bloody clothing to the Laundromat. The officers then brought Edwards into the interview room and left Zamora and Edwards alone. Zamora stated to Edwards that she should not have informed police officers about the bloody clothing at the Laundromat, and that he might have seen Parker's killer. He then asked if she thought he "should confess." Zamora also stated: "Baby, I saw somebody do it and I couldn't stop them because they were – they were going to try and kill me." Zamora later stated that the prosecutor "will never be able to convict me without a murder weapon," and that if he admitted his presence at the crime scene, he might be spared the death penalty.

The jury convicted Zamora of first degree murder and found that he personally used a deadly and dangerous weapon, personally inflicted great bodily injury upon the victim, and committed the murder during a robbery. (§§ 187, subd. (a), 189, 12022, subd. (b), 12022.7, subd. (a), 190.2, subd. (a)(17)(A).) The trial court sentenced Zamora to an indeterminate term of life without the possibility of parole, and to a four-year determinate term for the personal weapon use and great bodily injury allegations. The court ordered him to pay a \$10,000 restitution fine, a \$10,000 parole revocation restitution fine (stayed), a \$30 court security fee, a \$400 criminal conviction assessment,

as well as restitution to the victim's family. (§§ 1202.4, subd. (b), 1202.45, 1465.8; Gov. Code, § 70373.) The court awarded Zamora 437 days of presentence custody credit.

Zamora appeals and contends that: 1) insufficient evidence supports the judgment, and 2) the trial court improperly calculated the determinate term.

DISCUSSION

I.

Zamora argues that he has been denied due process of law under the California and federal Constitutions because the judgment is not supported by sufficient evidence.

First, Zamora asserts that the prosecutor did not establish that he killed Parker, only that he had the opportunity to do so. (*People v. Blakeslee* (1969) 2 Cal.App.3d 831, 838 ["No one witnessed the shooting, no one placed defendant in the apartment at the time of the shooting, no one saw defendant with a weapon, and no one identified defendant with any particular weapon"].) He points out that there is no evidence that he quarreled with Parker and contends there is no evidence that he had a motive to kill him. Zamora points to evidence that he had been paid on December 15, 2009, and therefore had funds to pay his rent and other debts. He adds that police officers did not recover the knife that was used to kill Parker.

Second, Zamora argues there is no evidence that he robbed Parker, asserting that he was not found in possession of Parker's property. He contends that Parker may not have possessed money on his person at the time of his death because he might have placed it in his mobile home.

Third, Zamora contends the prosecution did not establish that he formed the intent to rob Parker before killing him. (*People v. Wallace* (2008) 44 Cal.4th 1032, 1077; *People v. Davis* (2005) 36 Cal.4th 510, 564-565 ["an intent to steal that arises *after* the infliction of the fatal wounds cannot support a felony-murder conviction"].)

Finally, Zamora argues there is insufficient evidence of premeditation and deliberation, asserting that the killing was a "mindless frenzy." He claims that no

category of evidence set forth in *People v. Anderson* (1968) 70 Cal.2d 15, 26-27, was proven.

In reviewing the sufficiency of evidence to support a conviction, we examine the entire record and draw all reasonable inferences therefrom in favor of the judgment to determine whether there is reasonable and credible evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Streeter* (2012) 54 Cal.4th 205, 241.) Our review is the same in prosecutions primarily resting upon circumstantial evidence. (*Ibid.*) "An appellate court must accept logical inferences that the jury might have drawn from the evidence even if the court would have concluded otherwise." (*Ibid.*) Our review does not redetermine the weight of the evidence or the credibility of witnesses. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1129, overruled on other grounds by *People v. Rundle* (2008) 43 Cal.4th 76, 151.)

Circumstantial evidence may be sufficient to connect a defendant to a crime and may prove his guilt beyond a reasonable doubt. (*People v. Abilez* (2007) 41 Cal.4th 472, 504.) If the factual findings are reasonably supported by the evidence and all reasonable inferences therefrom, the opinion of the reviewing court that the circumstances might support a contrary finding does not warrant reversal of the judgment. (*Ibid.*)

Sufficient evidence and reasonable inferences therefrom establish that Zamora robbed Parker and killed him during the robbery.

Coworker Smith saw Zamora and Parker together at the Chevron gasoline station, and Zamora informed Smith that he was driving Parker to the mall. Within an hour, passers-by found Parker's body in the industrial park. Bloody footprints at the crime scene matched the soles of Zamora's shoes recovered from the Laundromat the following day. Based on the number of footprints at the scene, Zamora's shoes were likely inked in blood more than once. Parker's blood was inside Zamora's truck (the seat, door handle, and steering wheel) and had soaked through Zamora's clothing. Forensic analysis established that Zamora's shoes had blood splatter above and in front of the

shoes that was not consistent with his walking through blood. Zamora also had cuts on his knuckles when he picked up Edwards at her workplace.

Following the crime, Zamora showered and laundered his bloody clothing at the Laundromat, thereafter abandoning it. He instructed Edwards to stand in front of the washing machine to prevent others from seeing the blood. Zamora also lied to police officers; he stated that he left Parker at the Chevron gasoline station and denied visiting the Laundromat. Zamora informed Edwards that "they will never be able to convict me without a murder weapon." It is a reasonable inference from his statement that Zamora knew police officers did not recover the murder weapon because he had disposed of it.

Although Zamora's motive is not an element that the prosecution was required to establish, evidence establishes that he was spending \$100 to \$150 weekly on marijuana and crack cocaine. He testified that he had a "significant" crack cocaine problem and that he owed "a lot of money to a lot of people." Days prior to Parker's murder, Zamora asked Edwards to invade her deferred compensation account and lend him money.

On the day of Parker's murder, Zamora and Parker cashed their paychecks at a liquor store, so Zamora knew that Parker had a large amount of cash. At the Chevron gasoline station, Parker later purchased cigarettes and a drink. Police officers recovered neither currency nor a wallet from Parker's body or his backpack. His debit card lay near his body, permitting the reasonable inference that Zamora had rummaged through his clothing. When Zamora returned home that evening, he paid Edwards his share of the rent and left the apartment "to pay someone some money." Moreover, analysis of money recovered from Zamora at the police station disclosed the presence of blood. Thus, there is substantial evidence that Zamora murdered Parker in the course of robbing him.

There are also reasonable inferences from the evidence that Zamora *intended* to rob Parker prior to killing him. Zamora was in debt and had a significant crack cocaine problem. He knew that Parker had a large amount of money from cashing his paycheck. Direct evidence of the defendant's mental state is "rarely available" except

through his testimony, and thus must be established circumstantially. (*People v. Beeman* (1984) 35 Cal.3d 547, 558.)

Moreover, there is sufficient evidence to support Zamora's conviction of a premeditated and deliberate killing. (§ 189.) "Premeditation" means "thought over in advance" and the process does not require any extended period of time. (*People v. Halvorsen* (2007) 42 Cal.4th 379, 419.) "Deliberation" refers to careful weighing of considerations in forming a course of action. (*Ibid.*)

In *People v. Anderson, supra*, 70 Cal.2d 15, 26-27, our Supreme Court identified three categories of evidence relevant to determining premeditation and deliberation: planning activity, motive, and manner of killing. (*People v. Streeter, supra*, 54 Cal.4th 205, 242.) "However, these factors are not exclusive, nor are they invariably determinative." (*Ibid.*) The factors merely guide the reviewing court in assessing whether the evidence supports an inference that the killing occurred as the result of preexisting reflection rather than an unconsidered or rash impulse. (*Ibid.*)

Here there is sufficient evidence of each factor. Zamora drove Parker to the industrial park after most of the businesses had closed for the day. He had a knife with him and knew that Parker had a substantial sum of money from his paycheck. Zamora's motive for the killing was to obtain money to pay his debts and support his drug addiction. As for manner of killing, Zamora slit Parker's throat, cutting through his neck to his spine, ensuring that he would die and be unable to identify him.

People v. Blakeslee, supra, 2 Cal.App.3d 831, does not assist Zamora. There, the defendant, accused of killing her mother, was at the crime scene before and after the killing. (*Id.* at pp. 837-838.) She had quarreled with her mother on occasion, gave a false alibi, and lied about her brother's rifle. (*Id.* at p. 838.) The murder weapon was not recovered or otherwise connected to her. (*Id.* at p. 840.) The reviewing court concluded that the evidence was insufficient and that defendant's brother had equal opportunity and motive to commit the crime. (*Ibid.*)

Our Supreme Court has distinguished *Blakeslee*, stating: "When we decide issues of sufficiency of evidence, comparison with other cases is of limited utility, since

each case necessarily depends on its own facts." (*People v. Thomas* (1992) 2 Cal.4th 489, 516.) Here the circumstances indicating Zamora's guilt are stronger than those in *Blakeslee*. Zamora's footprints were found at the crime scene, his knuckles were injured, Parker's blood was on his clothing and in the interior of his truck, blood was found on money taken from him at the police station, and he made statements to Edwards implying guilt. In our analysis, we focus on the evidence presented at trial rather than evidence that was not presented. (*People v. Story* (2009) 45 Cal.4th 1282, 1299 ["The Court of Appeal erred in focusing on evidence that did not exist rather than on the evidence that did exist"].)

II.

Zamora points out that the trial court erred by imposing a one-year sentence for the personal infliction of great bodily injury because section 12022.7, subdivision (g) provides that the sentence enhancement does not apply to murder. He adds that the court erred by sentencing him to a three-year sentence for personal use of a knife, instead of the prescribed one year. (§ 12022, subd. (b)(1).) The Attorney General concedes.

The trial court shall amend the abstract of judgment to: 1) strike the three-year sentence for the great bodily injury allegation, and 2) reflect a one-year determinate term for the personal use of a deadly weapon. The court shall forward the amended abstract to the Department of Corrections and Rehabilitation. The judgment is otherwise affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Charles W. Campbell, Jr., Judge

Superior Court County of Ventura

Carol K. Lysaght, under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Lance E. Winters, Senior Assistant Attorney General, Lawrence M.
Daniels, Supervising Deputy Attorney General, Eric E. Reynolds, Deputy Attorney
General, for Plaintiff and Respondent.